IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

M/s. Bokariya Trading Company and others.
vs.
Smt. Mangi Devi.

S.B.CIVIL SECOND APPEAL NO.92/2007 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 17.2.2006 PASSED BY SHRI S.K. PAREEK, DISTRICT JUDGE, PALI IN CIVIL APPEAL DECREE NO.34/2003.

DATE OF JUDGMENT ::: 21.3.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Anil Mehta, for the appellants.
Mr. SN Vyas, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

The appellants' present second appeal is against the judgment and decree dated 17.2.2006 by which the first appellate court allowed the plaintiff's first

appeal and reversed the judgment and decree dated 8.4.2003 whereby the trial court dismissed the plaintiff's suit for eviction.

Learned counsel for the appellants vehemently submitted that the trial court considered the evidence of the parties and thereafter, clearly held that the landlord is in possession of very many properties and she also has her father's property with her being the only daughter of her father and thereafter, the trial court decided the issue of personal bonafide necessity against the plaintiff. It is submitted that the first appellate court without considering the complete evidence and ignoring the availability of alternate accommodation, reversed the finding of the trial court on the issue of personal bonafide necessity and thereby committed error of law.

I considered the submission of learned counsel for the appellants and perused the reasons given by both the courts below.

It will be worthwhile to mention here that the plaintiff filed suit for eviction of the tenant on the allegation that the suit property was let out as back as on 15.2.1977 to defendant no.1 M/s. Bokariya Trading Company. However, at the time of filing of the suit,

the business of M/s. Jawanmal Parasmal was running in the suit premises. The plaintiff submitted that she wants to live in the disputed property and wants to use the premises in dispute for running his family business. It is not in dispute that the plaintiff's husband and sons are engaged in the business. The trial court considered the other accommodation of the plaintiff which is the hall in first floor of the disputed property and two rooms, latrine, bathroom etc. but the trial court ignored the facts of the case which is apparent from the judgment of the trial court because the trial court failed to appreciate that the suit premises were needed not only for residence of the plaintiff but for running the plaintiff's family business also. The plaintiff's own case was that she will reside in rest of protion and will run family business with the help of her husband obviously in the ground floor premises. This fact was noticed by the first appellate court and the first appellate court considered the evidence of the parties and thereafter recorded finding of fact in favour of the plaintiff. The finding of fact is not vitiated by any reason and, therefore, I do not find any illegality in the judgment and decree of the first appellate court.

In view of the above, I do not find any substantial question of law involved in this appeal and

this second appeal deserves to be dismissed.

At this juncture, learned counsel for the appellant prayed that the appellants may be allowed to stay in the suit property for three years because of the reason that the appellants will have to wind up the business which is running since 1977 and about 30 years have already passed and so also, the appellants will have to make arrangements for other accommodation.

Learned counsel for the respondent has serious objection to the grant of time to the appellants.

I considered this prayer of learned counsel for the appellants and looking to the facts of the case, this Court is of the view that the appellants be granted time upto 31.3.2008 to vacate the suit premises.

Therefore, it is ordered that in case, the appellants furnish a written undertaking before the trial court within a period of two months from today that they shall hand over the vacant possession to the landlord by or before 31.3.2008 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the

landlord, the decree under challenge shall not be executed till 1.4.2008. The appellants shall also deposit the rent month by month by 15th day of each succeeding month of their tenancy in the trial court or pay directly to the landlord.

In case of non-compliance of the order or default in payment of amount mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya